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SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From
Securities and Exchange Commission
Office of FOIA Services
100 F Street, NE
Washington, DC 20549-2736

Extension: Rule 22c-2

SEC File No. 270-541, OMB Control No. 3235-0620

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 22c-2 (17 CFR 270.22c-2) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the "Investment Company Act" or "Act") requires the board of directors (including a majority of independent directors) of most registered open-end investment companies ("funds") to either approve a redemption fee of up to two percent or determine that imposition of a redemption fee is not necessary or appropriate for the fund. Rule 22c-2 also requires a fund to enter into written agreements with their financial intermediaries (such as broker-dealers and retirement plan administrators) under which the fund, upon request, can obtain certain shareholder identity and trading information from the intermediaries. The written agreement

must also allow the fund to direct the intermediary to prohibit further purchases or exchanges by specific shareholders that the fund has identified as being engaged in transactions that violate the fund's market timing policies. These requirements enable funds to obtain the information that they need to monitor the frequency of short-term trading in omnibus accounts and enforce their market timing policies.

The rule includes three "collections of information" within the meaning of the Paperwork Reduction Act of 1995 ("PRA").¹ First, the rule requires boards to either approve a redemption fee of up to two percent or determine that imposition of a redemption fee is not necessary or appropriate for the fund. Second, funds must enter into information sharing agreements with all of their "financial intermediaries"² and maintain a copy of the written information sharing agreement with each intermediary in an easily accessible place for six years. Third, pursuant to the information sharing agreements, funds must have systems that enable them to request frequent trading information upon demand from their intermediaries, and to enforce any restrictions on trading required by funds under the rule.

The collections of information created by rule 22c-2 are necessary for funds to effectively assess redemption fees, enforce their policies in frequent trading, and monitor short-term trading,

¹ 44 U.S.C. 3501-3520.

² The rule defines a Financial Intermediary as: (i) Any broker, dealer, bank, or other person that holds securities issued by the fund in nominee name; (ii) a unit investment trust or fund that invests in the fund in reliance on section 12(d)(i)(E) of the Act; and (iii) in the case of a participant directed employee benefit plan that owns the securities issued by the fund, a retirement plan's administrator under section 316(A) of the Employee Retirement Security Act of 1974 (29 U.S.C. 1002(16)(A) or any person that maintains the plans' participant records. Financial Intermediary does not include any person that the fund treats as an individual investor with respect to the fund's policies established for the purpose of eliminating or reducing any dilution of the value of the outstanding securities issued by the fund. Rule 22c-2(c)(1).

including market timing, in omnibus accounts. These collections of information are mandatory for funds that redeem shares within seven days of purchase. The collections of information also are necessary to allow Commission staff to fulfill its examination and oversight responsibilities.

Rule 22c-2(a)(1) requires the board of directors of all registered open-end management investment companies and series thereof (except for money market funds, ETFs, or funds that affirmatively permit short-term trading of its securities) to approve a redemption fee for the fund, or instead make a determination that a redemption fee is either not necessary or appropriate for the fund. Commission staff understands that the boards of all funds currently in operation have undertaken this process for the funds they currently oversee, and the rule does not require boards to review this determination periodically once it has been made. Accordingly, we expect that only boards of newly registered funds or newly created series thereof would undertake this determination. Commission staff estimates that 42 funds (excluding money market funds and ETFs) are newly formed each year and would need to make this determination.³

Based on conversations with fund representatives,⁴ Commission staff estimates that it takes 2 hours of the board's time as a whole (at a rate of \$4465 per hour)⁵ to approve a redemption fee or make the required determination on behalf of all series of the fund. In addition, Commission staff estimates that it takes compliance personnel of the fund 8 hours (at a

³ This estimate is based on the number of registrants filing initial Form N-1A or N-3. This estimate does not carve out money market funds, ETFs, or funds that affirmatively permit short-term trading of their securities, so this estimate corresponds to the outer limit of the number of registrants that would have to make this determination.

⁴ Unless otherwise stated, estimates throughout this analysis are derived from a survey of funds and conversations with fund representatives.

⁵ The estimate of \$4465 per hour for the board's time as a whole is based on conversations with representatives of funds and their legal counsel.

rate of \$66 per hour)⁶ to prepare trading, compliance, and other information regarding the fund's operations to enable the board to make its determination, and takes internal compliance counsel of the fund 3 hours (at a rate of \$345 per hour)⁷ to review this information and present its recommendations to the board. Therefore, for each fund board that undertakes this determination process, Commission staff estimates it expends 13 hours⁸ at a cost of \$10,493.⁹ As a result, Commission staff estimates that the total time spent for all funds on this process is 546 hours at a cost of \$440,706.¹⁰

Rule 22c-2(a)(2) also requires a fund to enter into information-sharing agreements with each of its financial intermediaries. Commission staff understands that all currently registered funds have already entered into such agreements with their intermediaries. Funds enter into new relationships with intermediaries from time to time, however, which requires them to enter into new information sharing agreements. Commission staff understands that, in general, funds enter into information-sharing agreement when they initially establish a relationship with an

⁶ The \$66 per hour figure for a compliance clerk is from SIFMA's *Office Salaries in the Securities Industry 2013*, modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

⁷ The \$345 per hour figure for internal compliance counsel is from SIFMA's *Management & Professional Earnings in the Securities Industry 2013*, modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

⁸ This calculation is based on the following estimates: (2 hours of board time + 3 hours of internal compliance counsel time + 8 hours of compliance clerk time = 13 hours).

⁹ This calculation is based on the following estimates: (\$8930 (\$4465 board time × 2 hours = \$8930) + \$528 (\$66 compliance time × 8 hours = \$528) + \$1035 (\$345 attorney time × 3 hours = \$1035) = \$10,493).

¹⁰ This calculation is based on the following estimates: (13 hours × 42 funds = 546 hours); (\$10,493 × 42 funds = \$440,706).

intermediary, which is typically executed as an addendum to the distribution agreement. The Commission staff understands that most shareholder information agreements are entered into by the fund group (a group of funds with a common investment adviser), and estimates that there are currently 850 currently active fund groups.¹¹ Commission staff estimates that, on average, each active fund group enters into relationships with 3 new intermediaries each year. Commission staff understands that funds generally use a standard information sharing agreement, drafted by the fund or an outside entity, and modifies that agreement according to the requirements of each intermediary. Commission staff estimates that negotiating the terms and entering into an information sharing agreement takes a total of 4 hours of attorney time (at a rate of \$392 per hour)¹² per intermediary (representing 2.5 hours of fund attorney time and 1.5 hours of intermediary attorney time). Accordingly, Commission staff estimates that it takes 12 hours at a cost of \$4704 each year¹³ to enter into new information sharing agreements, and all existing market participants incur a total of 10,200 hours at a cost of \$3,998,400.¹⁴

In addition, newly created funds advised by new entrants (effectively new fund groups) must enter into information sharing agreements with all of their financial intermediaries. Commission staff estimates that there are 47 new fund groups that form each year that will have

¹¹ ICI, 2017 INVESTMENT COMPANY FACT BOOK at Fig 1.8 (2017) (<https://www.ici.org/research/stats/factbook>).

¹² The \$392 per hour figure for attorneys is from SIFMA's *Management & Professional Earnings in the Securities Industry 2013*, modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

¹³ This estimate is based on the following calculations: (4 hours × 3 new intermediaries = 12 hours); (12 hours × \$392 = \$4704).

to enter into information sharing agreements with each of their intermediaries.¹⁵ Commission staff estimates that fund groups formed by new advisers typically have relationships with significantly fewer intermediaries than existing fund groups, and estimates that new fund groups will typically enter into 100 information sharing agreements with their intermediaries when they begin operations.¹⁶ As discussed previously, Commission staff estimates that it takes 4 hours of attorney time (at a rate of \$392 per hour)¹⁷ per intermediary to enter into information sharing agreements. Therefore, Commission staff estimates that each newly formed fund group will incur 400 hours of attorney time at a cost of \$156,800¹⁸ and that all newly formed fund groups will incur a total of 18,800 hours at a cost of \$7,369,600 to enter into information sharing agreements with their intermediaries.¹⁹

Rule 22c-2(a)(3) requires funds to maintain records of all information-sharing agreements for 6 years in an easily accessible place. Commission staff understands that most shareholder

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¹⁴ This estimate is based on the following calculations: (12 hours × 850 fund groups = 10,200 hours); (10,200 hours × \$392 = \$3,998,400).

¹⁵ ICI, 2017 INVESTMENT COMPANY FACT BOOK at Fig 1.8 (2017) (<https://www.ici.org/research/stats/factbook>).

¹⁶ Commission staff understands that funds generally use a standard information sharing agreement, drafted by the fund or an outside entity, and then modifies that agreement according to the requirements of each intermediary.

¹⁷ The \$392 per hour figure for an attorney is from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

¹⁸ This estimate is based on the following calculations: (4 hours × 100 intermediaries = 400 hours); (400 hours × \$392 = \$156,800).

¹⁹ This estimate is based on the following calculations: (47 fund groups × 400 hours = 18,800 hours) (\$392 × 18,800 = 7,369,600).

information agreements are stored at the fund group level and estimates that there are currently approximately 850 fund groups.²⁰ Commission staff understands that information-sharing agreements are generally included as addendums to distribution agreements between funds and their intermediaries, and that these agreements would be stored as required by the rule as a matter of ordinary business practice. Therefore, Commission staff estimates that maintaining records of information-sharing agreements requires 10 minutes of time spent by a general clerk (at a rate of \$59 per hour)²¹ per fund, each year. Accordingly, Commission staff estimates that all funds will incur 141.67 hours at a cost of \$8358.53²² in complying with the recordkeeping requirement of rule 22c-2(a)(3).

Therefore, Commission staff estimates that to comply with the information sharing agreement requirements of rule 22c-2(a)(2) and (3), it requires a total of 29,141.67 hours at a cost of \$11,403,358.53.²³

The Commission staff estimates that on average, each fund group requests shareholder information once a week, and gives instructions regarding the restriction of shareholder trades every day, for a total of 417 responses related to information sharing systems per fund group each

²⁰ ICI, 2017 INVESTMENT COMPANY FACT BOOK at Fig 1.8 (2017) (<https://www.ici.org/research/stats/factbook>).

²¹ The \$59 per hour figure for a general clerk is derived from SIFMA's Office Salaries in the Securities Industry 2013 modified to account for an 1800-hour work-year and inflation, and multiplied by 2.93 to account for bonuses, firm size, employee benefits, and overhead.

²² This estimate is based on the following calculations: (10 minutes \times 850 fund groups = 8500 minutes); (8500 minutes / 60 = 141.67 hours); (141.67 hours \times \$59 = \$8358.53).

²³ This estimate is based on the following calculations: (10,200 hours + 18,800 hours + 141.67 hours = 29,141.67 hours); (\$3,998,400 + \$7,369,600 + \$8358.53 = \$11,403,358.53).

year, and a total 354,450 responses for all fund groups annually.²⁴ In addition, as described above, the staff estimates that funds make 42 responses related to board determinations, 2550 responses related to new intermediaries of existing fund groups, 4700 responses related to new fund group information sharing agreements, and 850 responses related to recordkeeping, for a total of 8142 responses related to the other requirements of rule 22c-2. Therefore, the Commission staff estimates that the total number of responses is 362,592 ($354,450 + 8142 = 362,592$).

The Commission staff estimates that the total hour burden for rule 22c-2 is 29,687.67 hours at a cost of \$11,817,056.50.²⁵ Responses provided to the Commission will be accorded the same level of confidentiality accorded to other responses provided to the Commission in the context of its examination and oversight program. Responses provided in the context of the Commission's examination and oversight program are generally kept confidential. Complying with the information collections of rule 22c-2 is mandatory for funds that redeem their shares within 7 days of purchase. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the

²⁴ This estimate is based on the following calculations: ($52 + 365 = 417$); (417×850 fund groups = 354,450).

information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street, NE, Washington, DC 20549; or send an email to: PRA_Mailbox@sec.gov.

Dated: March 1, 2018.

Eduardo A. Aleman,

Assistant Secretary.

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²⁵ This estimate is based on the following calculations: (546 hours (board determination) + 29,141.67 hours (information sharing agreements) = 29,687.67 total hours); (\$440,706 (board determination) + \$11,376,350.53 (information sharing agreements) = \$11,817,056.50).